

Message Text

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TAGS:EFIS, PP

SUBJECT:VOYAGEUR IN PNG WATERS

REF: PORT MORESBY 755

1. SITUATION REPORTED REFTEL DOES NOT BODE WELL FOR FUTURE.
INABILITY OF US VESSELS TO PURCHASE LICENSES ONLY INCREASES
POTENTIAL FOR INCIDENT WHICH WILL IMPACT NEGATIVELY ON USG-
PNG BILATERAL RELATIONS AS WELL AS ON EFFORT TO NEGOTIATE
SPFRA. AS EMBASSY AWARE, US TUNA INDUSTRY IS GENERALLY

SUPPORTIVE OF SPFRA EFFORT. SO LONG AS NEGOTIATIONS ARE
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PROCEEDING AT A REASONABLE PACE TOWARD A CONVENTION, WE BE-
LIEVE MOST US TUNA VESSEL OWNERS, IN AN EXERCISE OF THEIR
OWN BUSINESS JUDGMENT, WILL PROBABLY SEEK TO AVOID INCIDENT
BY BUYING LOCAL LICENSES IF ECONOMICALLY FEASIBLE. IF SUCH
LICENSES ARE NOT AVAILABLE, ARE TOO COSTLY, OR HAVE CONDI-
TIONS ATTACHED WHICH ARE UNREASONABLE, AN INCREASING NUMBER
OF VESSEL OWNERS MAY FISH NOTWITHSTANDING COASTAL STATE

LAWS AND REGULATIONS. IF THAT OCCURS, OUR RELATIONSHIPS IN THE REGION COULD BE SERIOUSLY DAMAGED. IT IS THUS IMPORTANT, PARTICULARLY UNTIL SUCH TIME AS SPRFA BECOMES REALITY, THAT GPNG MAKE REASONABLE LICENSES AVAILABLE FOR

TUNA FISHING.

2. WITH REGARD QUESTIONS POSED PARAGRAPH THREE REFTTEL, SITUATION IN CASE OF AN ESTABLISHED SPFRA IS RELATIVELY SIMPLE. IF SPFRA AS ENVISAGED BY USG COMES INTO BEING AND US AND PNG ARE MEMBERS, LIKELIHOOD OF SEIZURE OCCURRING IN FIRST PLACE IS REMOTE. UNDER USG VIEW, SPFRA WOULD HAVE INSTITUTIONAL CAPABILITY TO MAKE RECOMMENDATIONS TO GOVERNMENTS OF REGULATORY, LICENSING AND OTHER MANAGEMENT MEASURES. EACH GOVERNMENT, IN THE EXERCISE OF ITS SOVEREIGNTY, WOULD HAVE THE RIGHT TO ACCEPT OR REJECT SUCH RECOMMENDATIONS. IF REJECTED, THE SPFRA RETURNS TO THE NEGOTIATING TABLE. IF ACCEPTED, THOSE AGREED INTERNATIONAL RECOMMENDATIONS WOULD BECOME BINDING ON BOTH THE US AND THE PNG. IN SUCH A CASE, IF A US VESSEL WAS IN VIOLATION OF AN AGREED MEASURE WITHIN PNG ZONE, US WOULD NOT OBJECT TO PNG RIGHT TO TAKE SUCH ACTION. THE LEGAL AND POLICY PROBLEMS GENERATED BY THE NORMAL SEIZURE SCENARIO (SPELLED OUT BELOW) WOULD NOT OCCUR. EMBASSY WOULD OF COURSE STILL PERFORM CONSULAR FUNCTIONS FOR SEIZED VESSEL AND CREW.

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3. IN THE PRESENT SITUATION, WHICH WILL REMAIN UNLESS THERE IS AN SPFRA TO WHICH THE US BELONGS, OR UNLESS US LEGISLATION IS CHANGED, A SEIZURE WOULD RESULT IN THE FOLLOWING CONSEQUENCES.

4. FIRST RESPONSIBILITY OF EMBASSY IN CASE OF A SEIZURE IS TO DO WHATEVER POSSIBLE TO EXPEDITE RELEASE OF VESSEL AND CREW, AND TO ENSURE THAT CREW IS NOT MISTREATED. THE SECRETARY OF STATE IS DIRECTED UNDER THE FISHERMENS PROTECTIVE ACT TO QUOTE IMMEDIATELY TAKE SUCH STEPS AS ARE NECESSARY (1) FOR THE PROTECTION OF SUCH VESSEL AND FOR THE HEALTH AND WELFARE OF ITS CREW; (2) TO SECURE THE RELEASE OF SUCH VESSEL AND ITS CREW; AND (3) TO DETERMINE THE AMOUNT OF ANY FINE LICENSE, FEE, REGISTRATION FEE OR OTHER DIRECT CHANGE END QUOTE NECESSARY TO SECURE THE RELEASE OF THE VESSEL AND CREW. THIS STATUTORY REQUIREMENT IS NOT TAKEN LIGHTLY AND HAS IN PAST CASES BEEN ITSELF THE SUBJECT OF DIFFICULTY BETWEEN THE USG AND OTHER GOVERNMENTS. SINCE USG DOES NOT RECOGNIZE THE SEIZING GOVERNMENT'S JURISDICTION, USG WOULD PRESS FOR QUICK RELEASE OF VESSEL, NOTWITHSTANDING APPLICATION OF SUCH COUNTRY'S LEGAL PROCESS. USG WOULD ALSO WORK TO ASSURE REA-

SONABLE DUE PROCESS AND TO AVOID UNREASONABLE PENALTIES.

5. WITH THIS IN MIND, EMBASSY SHOULD BE FAMILIAR WITH RELEVANT PROVISIONS OF PNG LAW WHICH WOULD BE APPLIED IN CASE OF SEIZURE, INCLUDING PENALTY PROVISIONS WHICH MIGHT

BE IMPOSED. ALSO, EMBASSY SHOULD HAVE AVAILABLE A LIST OF ATTORNEYS AND BAIL BONDSMEN (OR EQUIVALENT IF SUCH EXISTS) FOR USE BY A SEIZED VESSEL OPERATOR.

6. DURING COURSE OF PROCESS OF GETTING VESSEL AND CREW RELEASED, OR SHORTLY THEREAFTER, DEPT WOULD CABLE EMBASSY A DIPLOMATIC PROTEST NOTE FOR DELIVERY. TIMING OF DELIVERY AND STRENGTH OF NOTE'S LANGUAGE IS USUALLY RELATED
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TO THE VESSEL RELEASE PROCESS.

7. NEXT STEP WOULD INVOLVE PROCEDURES OF FISHERMEN PROTECTIVE ACT. THE FISHERMEN AND VESSEL OWNER WOULD NO DOUBT MAKE A CLAIM AGAINST THE USG FOR WHATEVER AMOUNTS WERE PAID AND COSTS INCURRED DUE TO THE SEIZURE. AFTER REVIEW OF PARTICULAR CIRCUMSTANCES SURROUNDING SEIZURE, USG WOULD LIKELY REIMBURSE VESSEL OWNERS FOR COSTS INCURRED. THE SECRETARY OF STATE WOULD THEN BE REQUIRED TO "NOTIFY" THE SEIZING GOVERNMENT OF THIS REIMBURSEMENT TO THE FISHERMEN, AND TO QUOTE TAKE SUCH ACTION AS HE DEEMS APPROPRIATE TO MAKE AND COLLECT CLAIMS AGAINST SUCH FOREIGN COUNTRY FOR THE AMOUNTS SO REIMBURSED AND THE PAYMENTS SO MADE END QUOTE.

8. THERE FOLLOWS IN THE FISHERMEN PROTECTIVE ACT PROVISIONS REQUIRING TRANSFER OF APPROPRIATED FUNDS UNDER THE FOREIGN ASSISTANCE ACT IF THE OTHER GOVERNMENT DOES NOT REIMBURSE THE USG WITHIN 120 DAYS OF NOTIFICATION. THIS PROVISION CAN BE WAIVED IF THE PRESIDENT CERTIFIES TO CONGRESS THAT IT IS NOT IN THE NATIONAL INTEREST TO TRANSFER SUCH FUNDS IN A PARTICULAR CASE. PNG IS NOT AT PRESENT RECIPIENT OF SUCH FUNDS AND THIS PARTICULAR PROVISION OF FISHERMENS PROTECTIVE ACT WOULD NOT BE MATERIAL. HOWEVER, IT IS IMPORTANT TO NOTE THAT OTHER PROCEDURAL ASPECTS OF FISHERMENS PROTECTIVE ACT DO APPLY AND WOULD NONETHELESS REQUIRE USG TO SEEK REIMBURSEMENT FROM PNG.

9. THE PARTICULAR PROVISION OF US LAW WHICH WOULD BE OF GREATEST IMPORTANCE IF PNG SEIZED A US TUNA VESSEL WOULD BE SECTION 205 OF FISHERY CONSERVATION AND MANAGEMENT ACT, WHICH WOULD PROVIDE FOR EMBARGOES OF PNG FISHERY PRODUCTS UNDER CERTAIN CIRCUMSTANCES. THIS
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SECTION OF LAW IS NEW AND HAS NOT YET BEEN APPLIED. ITS PROVISIONS ARE TRIGGERED BY A DETERMINATION OF THE SECRETARY OF STATE. ALTHOUGH THERE IS SOME LATITUDE IN THE MAKING OF THIS DETERMINATION, IT WOULD BE UNWISE TO RELY ON SUCH DISCRETION IN CASE OF A FISHING VESSEL SEIZURE. RELEVANT PROVISION IN A TUNA SEIZURE CASE READS: QUOTE IF THE SECRETARY OF STATE DETERMINES THAT...ANY FISH-

ING VESSEL OF THE UNITED STATES, WHILE FISHING IN WATERS BEYOND ANY FOREIGN NATION'S TERRITORIAL SEA, TO THE EXTENT THAT SUCH SEA IS RECOGNIZED BY THE UNITED STATES, IS SEIZED BY ANY FOREIGN NATION..AS A CONSEQUENCE OF A CLAIM OF JURISDICTION WHICH IS NOT RECOGNIZED BY THE UNITED STATES; HE SHALL CERTIFY SUCH DETERMINATION TO THE SECRETARY OF TREASURY. END QUOTE. IN MOST SITUATIONS REGARDING A US TUNA VESSEL SEIZURE, IT WOULD BE IMPOSSIBLE FOR SECSTATE NOT TO MAKE THIS DETERMINATION. THE SECRETARY OF TREASURY IS THEN REQUIRED TO PROHIBIT THE IMPORTATION INTO THE UNITED STATES OF ALL FISH AND FISH PRODUCTS FROM THE FISHERY INVOLVED (PNG TUNA) AND, UPON SECSTATES RECOMMENDATION, ANY OTHER FISH OR FISH PRODUCTS FROM THE FOREIGN NATION CONCERNED MAY ALSO BE EMBARGOED. THE EMBARGO IS REMOVED WHEN SECSTATE FINDS AND NOTIFIES THE SECRETARY OF THE TREASURY THAT THE REASONS FOR THE EMBARGO NO LONGER PREVAIL.

10. IN DEPT JUDGMENT, IMPOSITION OF FISHERY EMBARGO AGAINST PNG WOULD HAVE DAMAGING POLITICAL CONSEQUENCES AND PROBABLY ALSO BE A SERIOUS ECONOMIC MATTER FOR PNG FISHERY INTERESTS.

11. THE ABOVE SCENARIO IS WHAT WE ARE WORKING TO AVOID AND WHY WE NEED SPFRA. THE LEGISLATION NOTED WAS DRAWN UP IN THE CONTEXT OF TWENTY-FIVE YEARS OF ACRIMONY WITH A FEW COUNTRIES IN LATIN AMERICA ON THIS MATTER. WE ARE ANXIOUS TO AVOID A FISHERY CONFRONTATION IN THE SOUTH
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PACIFIC, AS ARE MOST U.S. TUNA FISHERMEN. IT IS ENTIRELY POSSIBLE, HOWEVER, THAT WE ARE HEADED TOWARDS SITUATION WHERE IT WILL BE DIFFICULT IF NOT IMPOSSIBLE TO AVOID A CONFRONTATION ON TUNA QUESTION, AND WE COULD BE FACING QUITE A MESS. SITUATION WOULD, OF COURSE, BE ALLEVIATED IF GPNG WILLING TO MAKE ECONOMICALLY FEASIBLE LICENSES AVAILABLE, BUT EVEN UNDER THESE CIRCUMSTANCES NOT ALL U.S.

VESSEL OWNERS AND CAPTAINS WOULD ALWAYS PURCHASE A LICENSE,
AND SEIZURES COULD RESULT. POINT IS THAT, FOR SHORT-TERM
WHILE SPRFA NEGOTIATIONS ONGOING, WE HOPE REASONABLE
LICENSES WILL BE MADE AVAILABLE, BUT FOR LONG-TERM ONLY
REAL SOLUTION IS WORKABLE SPRFA.

12. EMBASSY SHOULD DRAW ON ANY OF THE ABOVE TO MAKE
POINTS WITH CHAN. VANCE

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